

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
THE MUSEUM OF MODERN ART, and THE
SOLOMON R. GUGGENHEIM FOUNDATION,

Plaintiffs,

BOY LEADING A HORSE, and LE MOULIN DE
LA GALETTE, Two Paintings by Pablo Picasso,

Plaintiffs-in-rem,

- against -

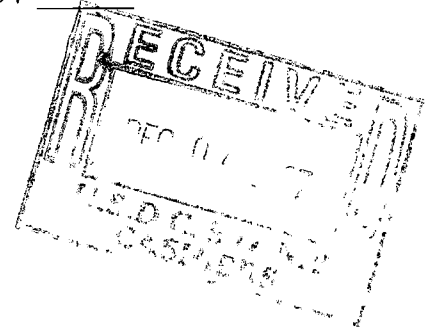
JULIUS H. SCHOEPS,

Defendant.
-----X

07 CV 11074

Complaint for Declaratory Relief

Index No. CV



Plaintiffs The Museum of Modern Art ("MoMA") and The Solomon R. Guggenheim Foundation (the "Guggenheim") (collectively, the "Museums"), through their undersigned counsel, Cleary Gottlieb Steen & Hamilton LLP, allege as follows:

NATURE OF THE ACTION

1. This action concerns two iconic paintings by Pablo Picasso, *Boy Leading a Horse* (1906), which MoMA acquired as a gift from William S. Paley ("Paley") in 1964 and absolutely acquired on Paley's death in 1990, and *Le Moulin de la Galette* (1900), which Justin K. Thannhauser ("Thannhauser") bequeathed and transferred to the Guggenheim in 1963 as part of a gift of many important works and which the Museum absolutely acquired in 1978 following Thannhauser's death in 1976. Thannhauser was a leading Jewish art dealer in Berlin who was forced to flee Germany in 1937. Paley was the son of a Ukrainian Jewish immigrant, an important collector of modern art, a successful businessman and President and then Chairman of MoMA.

2. These two paintings (the “Paintings”) had at one time been part of the private collection of Paul Robert Ernst von Mendelssohn-Bartholdy (1875-1935) (“von Mendelssohn-Bartholdy”), a prominent and affluent German banker and art collector, patriarch of one branch of an extraordinarily distinguished German family of Jewish descent, representative of that branch of the family as a director of Mendelssohn & Co. Bank, and proprietor of the ancestral estate outside of Berlin, Schloss Börnicke. When he married for a second time in 1927, von Mendelssohn-Bartholdy gave the Paintings, along with the other paintings in his collection, to his second wife, Elsa Lucy Emmy Lolo von Lavergue-Peguilhen (1899-1986) (later Countess Kesselstatt), who was not Jewish. Von Mendelssohn-Bartholdy died of heart problems in a Berlin sanatorium in May 1935. He had no children. As he had earlier given his art collection to his second wife, it was excluded from his estate by his last will.

3. The Paintings, which were likely sent to Switzerland for sale or exhibition as early as March 1933, were exhibited in Buenos Aires in October 1934. Some time between July 1934 and August 1935, the Paintings were sold to Galerie Thannhauser, which had branches in Berlin and Lucerne, and were again in Switzerland by August 1935 at the latest. In August 1936, *Boy Leading a Horse* was sold through Thannhauser’s partner Siegfried Rosengart (“Rosengart”) and dealer Albert Skira to Paley in Switzerland. *Le Moulin de la Galette* was part of Thannhauser’s personal collection when he emigrated to the United States in 1940.

4. This action arises out of a challenge to the Museums’ ownership of the Paintings asserted by defendant Julius H. Schoeps (“Schoeps”). Schoeps purports to represent the heirs of von Mendelssohn-Bartholdy. Schoeps’ grandmother was one of von Mendelssohn-Bartholdy’s five siblings. Schoeps asserts no connection to the heirs of von Mendelssohn-Bartholdy’s second wife, to whom von Mendelssohn-Bartholdy gave the Paintings in 1927.

5. The issue Schoeps raises is solely whether the sale of the Paintings to Galerie Thannhauser by August 1935 was a forced sale. In letters addressed to each of the Museums dated March 28, 2007, defendant's counsel alleged that the sales of the Paintings to Thannhauser were made under duress due to Adolf Hitler's rise to power in 1933 and the effects of the Nazi regime on the von Mendelssohn-Bartholdy family due to their Jewish descent. In subsequent letters to each of the Museums dated November 1, 2007, counsel asserted again that his client Schoeps had valid claims of title to the Paintings, and demanded that they be returned. Contemporaneously with the filing of this action, the Museums are rejecting this demand.

6. Schoeps' claim that von Mendelssohn-Bartholdy's heirs are the rightful owners of the Paintings is very similar to the claim he recently brought in the New York courts, first in federal court and then in state court, against the London-based Andrew Lloyd Webber Art Foundation (the "ALWAF"), seeking to recover possession of a Picasso painting entitled *Portrait of Angel Fernandez de Soto* (1908), which was scheduled to be sold at Christie's in New York. This painting, along with the Paintings and two other paintings (for a total of five), were all owned by von Mendelssohn-Bartholdy, exhibited in Buenos Aires in October 1934, and sold to Galerie Thannhauser together by August 1935. On November 7, 2006, Schoeps' federal court complaint was dismissed for lack of either diversity jurisdiction (suits between foreigners are not diverse) or federal question jurisdiction. The following day, Schoeps filed suit in the New York State Supreme Court for New York County. On November 19, 2007, The Honorable Rolando T. Acosta, J.S.C., dismissed that complaint, finding that Schoeps' failure to obtain letters from Surrogate's Court appointing him as the personal representative of von Mendelssohn-Bartholdy's estate prevented him from bringing his claim. Since then, the ALWAF has instituted an action in

Great Britain, where *Portrait of Angel Fernandez de Soto* is now located, to defend its ownership of that painting, and Schoeps has filed a notice of appeal of Judge Acosta's order of dismissal.

7. In keeping with their ethical standards and obligation to honor legitimate claims, the Museums have carefully researched and investigated the provenance of the Paintings, including the factual circumstances surrounding the sale of the Paintings to Thannhauser. The Museums have concluded, for the reasons detailed below, that Schoeps' claims are completely without merit.

8. MoMA and the Guggenheim are prepared to have all factual and legal issues surrounding Schoeps' claims to the Paintings resolved by this Court. They therefore bring this action for a declaration: (a) that contrary to Schoeps' contention, there is no legal or factual basis for a presumption of duress; (b) that the available facts establish that there was no duress with respect to the sale of the Paintings, whether any such presumption exists or not; (c) that Schoeps' claims are barred by the equitable doctrine of laches under New York law due to the prejudice to the Museums' defense of their title to the Paintings arising from defendant's unreasonable delay in asserting these claims; (d) that Schoeps' claims are also barred by the laws of Switzerland and Germany, in one or the other of which jurisdictions the allegedly duress-caused sales were made, due to the good faith of the purchasers and the continuous possession of Thannhauser and Paley for the period specified under Swiss and German laws; (e) that, in any event, Schoeps is not a proper claimant to ownership of these Paintings; and (f) that, accordingly, the claims of ownership made by Schoeps to the Paintings are without merit.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a), because there is complete diversity of citizenship between plaintiffs and defendant and the matter in controversy exceeds \$75,000, exclusive of interest and costs.

10. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c), because defendant Schoeps is subject to personal jurisdiction here, and the Paintings that are the subject of this dispute are located in this District.

11. This Court has jurisdiction to grant the requested relief pursuant to 28 U.S.C. §§ 2201(a) and 2202.

12. This Court may exercise personal jurisdiction over the defendant because he has availed himself of the protection of New York law in relation to a similarly situated work of art formerly owned by von Mendelssohn-Bartholdy and purchased by Thannhauser together with the Paintings, because he has transacted business in New York in relation to the Paintings by demanding surrender of possession in New York, and because the Paintings are located in this district and defendant is therefore subject to service of process pursuant to 28 U.S.C. § 1655.

THE PARTIES

13. Plaintiffs are two prominent museums in New York City. Both are not-for-profit New York education corporations holding their assets (including the Paintings) for the public trust. Plaintiffs are legally obligated to maintain and protect those assets for the benefit of the public.

14. Founded in 1929, MoMA is the largest and finest museum of its kind in the world. More than 2.4 million people visit MoMA each year to see its permanent collection

and scores of special exhibitions. The collection, which is unparalleled in its scope and depth, numbers more than 100,000 works in all media dating from the 1880s to the present.

15. *Boy Leading a Horse* is one of the most important and well-known paintings in MoMA's collection. It has been exhibited throughout the world since being purchased by Paley in 1936, including frequent exhibition in the Museum's galleries both during Paley's life and after he died in 1990. *Boy Leading a Horse* has been exhibited in virtually every major exhibition of Picasso's work from 1939 to the present, including MoMA's historic 1980 Picasso retrospective, attended by 1.1 million people. In addition, the Painting was part of an exhibition of Paley's collection that toured 16 major museums in the United States, Canada, Japan and Australia in the 1990s. The cover of the catalogue accompanying the exhibition featured a reproduction of *Boy Leading a Horse*, and the catalogue specifically noted von Mendelssohn-Bartholdy's previous ownership. A list of publications that include *Boy Leading a Horse* is attached hereto as Exhibit A. The painting was also exhibited in Berlin for seven months in 2004 as part of a major exhibition of works from MoMA's collection. More than one million people attended the 2004 exhibition in Germany. The complete list of exhibitions of *Boy Leading a Horse* is attached hereto as Exhibit B.

16. The Solomon R. Guggenheim Foundation was chartered by the Board of Regents of New York State on June 25, 1937. Originally named the "Museum of Non-Objective Painting," the Guggenheim opened to the public in 1939 under the auspices of the Foundation. The Guggenheim's mission is "to promote the understanding and appreciation of art, architecture, and other manifestations of visual culture, primarily of the modern and contemporary periods, and to collect, conserve, and study the art of our time." The Guggenheim is a world-class institution with a global reach that realizes its mission through its exhibitions,

education programs, research initiatives and publications. Last year, over 2.4 million visitors came to view the art on display in the network of museums that are operated by the Guggenheim in New York, Venice, Bilbao, Berlin and Las Vegas.

17. *Le Moulin de la Galette* is one of the most important and well-known paintings in the Guggenheim's collection. *Le Moulin de la Galette* has been on frequent view in the Thannhauser Galleries at the Guggenheim since 1965 and has been included in many major exhibitions since 1939. The complete list of exhibitions of *Le Moulin de la Galette* is attached hereto as Exhibit C. The Painting is featured on the cover of the Guggenheim's 2001 catalogue for the entire Thannhauser Collection, which is a major component of the Museum's collection. This catalogue specifically noted von Mendelssohn-Bartholdy's prior ownership. Three previous catalogues of the Thannhauser Collection, published by the Guggenheim in 1965, 1972 and 1978, include color reproductions of *Le Moulin de la Galette* and the latter publication also notes von Mendelssohn-Bartholdy's prior ownership. A list of publications that include *Le Moulin de la Galette* is attached hereto as Exhibit D.

18. Both *Boy Leading a Horse* and *Le Moulin de la Galette* have been published extensively in the international literature on Picasso throughout many decades, revered as two of the artist's most important, and representative paintings.

19. Upon information and belief, defendant Schoeps is a resident of Berlin, Germany, and the great nephew of von Mendelssohn-Bartholdy.

KNOWN FACTS AND CIRCUMSTANCES

20. Von Mendelssohn-Bartholdy was born in 1875 into a notable German family descended from philosopher Moses Mendelssohn and composer Felix Mendelssohn-Bartholdy. His father was Ernst von Mendelssohn-Bartholdy, who enjoyed immense success as

a banker and wealthy philanthropist and had wide-ranging influence and respect amidst the Prussian royal circles. Kaiser Wilhelm recognized von Mendelssohn-Bartholdy's father's contributions by elevating him to the Prussian aristocracy in the late 1800s.

21. Von Mendelssohn-Bartholdy was a director of the prominent private bank, Mendelssohn & Co., which his family had founded in 1795 and passed down through family hands thereafter. The bank was traditionally headed by a member of each of the two branches of the ancestral family and, during the 1920s and 1930s, Franz von Mendelssohn served as the senior director of the bank, representing one branch of the family, with Paul von Mendelssohn-Bartholdy serving as director from the other branch until his death in 1935.

22. Like his father, a respected and wealthy banker and philanthropist, von Mendelssohn-Bartholdy was also an avid art collector, and built one of the most prominent private modern art collections in Europe, which included works by Vincent van Gogh, Pierre-August Renoir, Henri Rousseau, Georges Braque and other established modern artists. Von Mendelssohn-Bartholdy's collection also included important works by Picasso, including the Paintings. Von Mendelssohn-Bartholdy displayed his art collection in his double-lot house at Alsenstrasse 3/3a in Berlin, which was designed by famed architect Bruno Paul, and at the country estate at Schloss Börnicke, which was remodeled by Bruno Paul after von Mendelssohn-Bartholdy inherited it.

23. Von Mendelssohn-Bartholdy executed his first will in 1910 which provided for his then-wife, Charlotte Reichenheim (later Countess Wesdehlen), to receive a life interest in the family estate, Schloss Börnicke, but provided that, upon her death, the estate, including the land, house and contents would go to his younger brother, Alexander, in accordance with his father's express wish that the family estate remain in the male line of the

family. Von Mendelssohn-Bartholdy, however, expressly excluded from inheritance by Alexander all household property he and his wife Charlotte acquired during their marriage, including property such as furniture, gold and silver, jewelry, and artworks, which his wife was to inherit freely and without restriction.

24. Von Mendelssohn-Bartholdy had a long-standing relationship with Thannhauser, from whom he purchased a number of his works, including *Le Moulin de la Galette* in or around 1910. Thannhauser owned Galerie Thannhauser, a renowned art gallery, founded in the early years of the twentieth century in Munich by Thannhauser's father. The Galerie then expanded to include branches in Berlin, which Thannhauser ran, and in Lucerne, which Thannhauser's cousin, Rosengart, ran. Thannhauser became a leading force in the German and international art community, and the von Mendelssohn-Bartholdys and their extended family became regular and important clients. Due to the rise of the Nazi regime, Thannhauser emigrated to Paris in 1937. He was then forced, in 1939, to remain in Switzerland when the borders with France closed. In 1940, he emigrated to New York.

25. Von Mendelssohn-Bartholdy regularly sent works from his collection on loan to German and international exhibitions at established museums and galleries and for sale on the market. For example, during 1930-34, von Mendelssohn-Bartholdy sent works from his collection to exhibitions in Frankfurt, Paris, Basel, and Buenos Aires. Von Mendelssohn-Bartholdy also refused a request in 1932-33 to loan works by Rousseau to an exhibition at the Kunstverein Basel because he did not wish to remove the works from storage at his country house, Schloss Börnicke. There is no evidence of any restrictions placed by the Nazi regime on von Mendelssohn-Bartholdy's ability to send his art out of Germany.

26. Von Mendelssohn-Bartholdy also sold major works from his collection in the early 1930s through Thannhauser and other dealers, including the well-known Parisian dealer, Paul Rosenberg of Galerie Rosenberg, and the Berlin émigré dealer, Walter Feilchenfeldt in Zurich. There is no evidence of any restrictions on or duress with respect to any of those sales, or that he received less than fair value.

27. On September 22, 1927, von Mendelssohn-Bartholdy married his second wife, Elsa, and gifted his art collection to her as a wedding present. At the time of her death in 1986, Countess Kesselstatt resided in Ascona, Switzerland. She was survived by a daughter whose whereabouts is not known to plaintiffs.

28. Adolf Hitler became Chancellor of Germany in January of 1933. The Nazi party program to deprive Jews of their German citizenship and their rights as citizens began thereafter and became official State policy with the passage of the Nuremberg Laws in September 1935, effective January 1936. Under these laws von Mendelssohn-Bartholdy, were he still alive, would have been considered Jewish, but his second wife, Elsa, would not. Up until the time of von Mendelssohn-Bartholdy's death in May 1935, the prominence and social and economic standing of the von Mendelssohn-Bartholdy family, and the prevalence of Protestantism among the family since the mid 1800s, mitigated the impact of Nazi anti-Semitism on von Mendelssohn-Bartholdy. There was no restraint of his freedom of movement, his right to serve as a director of the bank, or his ability to transfer artwork or other assets. This lack of restriction applied *a fortiori* to his wife, who was Christian.

29. There is no evidence that von Mendelssohn-Bartholdy or his second wife suffered pressure to sell their art through any discriminatory measure, nor is there any indication that they were restricted in their ability to receive proceeds of art sales or to freely utilize the

proceeds of art sales in any currency. It does not appear that any exit taxes (*Reichsfluchtsteuer*) or discriminatory taxes were ever levied, nor were their personal assets ever restricted through blocked accounts (*Sperrkonto*).

30. Indeed, on March 23, 1933, von Mendelssohn-Bartholdy sent five paintings by Picasso to Basel, Switzerland. They were shipped by the Berlin art transporter, Gustav Knauer, to the Kunstverein Basel, where they were received by Christoph Bernoulli (“Bernoulli”), a Swiss art dealer with whom von Mendelssohn-Bartholdy and his extended family had a long-standing association. Bernoulli then sent the Picasso paintings to storage in Basel. No restrictions or hindrances on the transfer were erected by the German government. The works were granted a year-long renewable customs clearance. There is a strong probability that these five paintings were the same five paintings later sold to Thannhauser, including the Paintings.

31. In July 1934, von Mendelssohn-Bartholdy informed Rosengart of his willingness to part with five Picasso paintings “eventually, for a good offer.” These paintings are the same five paintings, including the Paintings, later sold to Thannhauser.

32. In October of that year, the Paintings were included in a Picasso exhibit at Galeria Mueller in Buenos Aires, which was organized in collaboration with Thannhauser. Again, no restrictions or hindrances on the movement of the Paintings were erected by the German government.

33. By August 31, 1935, the five Picassos, including the Paintings, had been sold or transferred to Thannhauser. On that date, they were listed in a register entry of Galerie Thannhauser under numbers 1649 to 1653 with an indication that they came from the collection of von Mendelssohn-Bartholdy. The actual date of the sale and the amount paid for the Paintings

is unknown. Because there is no record of a shipment on or around this date and it is not known if the Berlin or the Lucerne branch of the Galerie received the paintings, it is distinctly possible that these paintings never returned to Germany after being exhibited in Buenos Aires. This was consistent with the actions of the Galerie at that time. In 1932, for example, Thannhauser instructed the Zurich Kunsthaus to return exhibition loans not to the Berlin branch, but rather to the Lucerne branch of the Galerie Thannhauser.

34. On the evening of May 10, 1935, von Mendelssohn-Bartholdy died, and was survived by his second wife Elsa and his four sisters. His younger brother Alexander had passed away in 1917. In February 1935, von Mendelssohn-Bartholdy estimated his own personal assets, exclusive of prior gifts to his wife and familial property, to be valued at RM 1,700,000, which was a significant sum. At the time of his death, von Mendelssohn-Bartholdy maintained and alternatively resided at the properties Schloss Börnicke, Alsenstrasse 3/3a, and also at Gartenhaus Schloss Bellevue, a pavilion on the grounds of one of the Berlin royal palaces. In addition, von Mendelssohn-Bartholdy had substantial assets in locations outside of Germany, including Holland, Belgium, and England. The five Picasso paintings sold to Thannhauser, including the Paintings, represented a small fraction of von Mendelssohn-Bartholdy's net worth.

35. On February 8, 1935, a few months before his death, von Mendelssohn-Bartholdy executed a will, superseding his earlier will of 1910, which affirmed that he had gifted his entire collection of paintings to Elsa on the occasion of their marriage in 1927, and therefore his art collection was specifically excluded from the estate. Elsa received from the estate an outright interest in the property belonging to the marital household and the wedding gifts, and a lifetime interest in the rest of his estate, with the remainder subsequent interest being given to von Mendelssohn-Bartholdy's four surviving sisters, including Schoeps' grandmother.

36. Von Mendelssohn-Bartholdy's funeral was held five days after his death, on May 15, 1935. Immediately following the funeral, the beneficiaries of von Mendelssohn-Bartholdy's will, including his four sisters, met at Schloss Börnicke in the presence of von Mendelssohn-Bartholdy's pastor and lawyer, and signed a legal protocol representing their official acceptance of the February 1935 will as valid and legally binding and expressly ratifying the 1927 inter vivos gift of von Mendelssohn-Bartholdy's art collection to Elsa and confirming her right to dispose of that collection. Defendant Schoeps' grandparents, Marie Busch (née von Mendelssohn-Bartholdy) and her husband Felix Busch, were both signatories to this protocol. In 2004, when the Picasso painting *Boy with a Pipe*, which Elsa had sold in 1949, commanded a price of more than one hundred million dollars at auction, Schoeps himself affirmed that Elsa had had the legal right to sell the painting, although he questioned her morality in doing so.

37. The German courts approved the Inheritance Certificate in December 1935, and von Mendelssohn-Bartholdy's estate was finally resolved in January 1939, when Elsa inherited RM 847,201.91. Elsa also inherited significant shares in the family banking and business assets in Germany, Holland, England and elsewhere. There is no evidence of any Nazi seizures, special payments or release of estate funds to restricted bank accounts following von Mendelssohn-Bartholdy's death.

38. After his death, von Mendelssohn-Bartholdy's widow continued to reside at Schloss Börnicke, Alsenstrasse 3/3a, and Gartenhaus Schloss Bellevue. In August 1938, several years after von Mendelssohn-Bartholdy's death, Elsa sold Alsenstrasse to the authorities in what may have been an eminent domain condemnation as the house was located on a site intended by Albert Speer for an ambitious development plan for Nazi government buildings. In 1936 and 1938, Elsa sold limited parcels of the over 1000 hectares of land surrounding Schloss

Börncke in accordance with new Reich policies of land settlement but, after she remarried Austrian Count Max von Kesselstatt, they resided together at Schloss Börnicke. In March 1943, Elsa arranged to let the property to the Swiss Embassy until the spring of 1945, when she fled to Switzerland as the Soviet army approached. After her departure, Schloss Börnicke was seized by invading Soviet forces. Today it is a cultural center, tourist destination and concert site.

39. Von Mendelssohn-Bartholdy continued as a director of Mendelssohn & Co. until his death in 1935, at which point his widow Elsa became a silent partner. No family member relinquished their ownership interest until 1938. Harold James in *The Deutsche Bank and the Nazi Economic War Against the Jews* states: “Mendelssohn remained a successful bank for the first five years of the Nazi regime [1933-1938] and continued to be a member of the consortium issuing government debt.” See Harold James, *The Deutsche Bank and the Nazi Economic War Against the Jews*, Cambridge University Press, 2001, at 70. In December 1938, the three Mendelssohn family members considered Jewish under the Nuremberg laws stepped down as owners, and the process of liquidating the bank began in January 1939 under the leadership of the non-Jewish family members, including Robert von Mendelssohn, and long-standing bank staff member, Dr. Ferdinand Kramer. The bank was acquired by Deutsche Bank in 1941-1942. Elsa and other non-Jewish family members maintained their holdings as partners and major shareholders in Mendelssohn & Co. until its acquisition by Deutsche Bank.

40. Throughout her life, Elsa was active in the art market and stayed in contact with and made sales through dealers including Bernoulli, the dealer to whom the five Picasso paintings had been sent in 1933. A number of paintings from von Mendelssohn-Bartholdy’s collection remained in Elsa’s possession until at least the early 1950s, including important works by Picasso, Henri Rousseau and Vincent van Gogh. Members of the von Mendelssohn-

Bartholdy and Kesselstatt families remained in ongoing contact with Thannhauser and are registered as visitors to the Galerie Thannhauser in New York in the 1950s.

41. Elsa made vigorous post-war claims for the loss of property such as the familial estate, Schloss Börnicke. She pursued every avenue to gain compensation for or the return of the property, regardless of the complexity and difficulties of pursuing such a fight against the Soviet and occupation authorities. Despite her efforts, she was unsuccessful.

42. The von Mendelssohn-Bartholdy family also engaged in restitution and compensation actions in Berlin for their losses related to the Mendelssohn & Co. Bank, and in 1968 received DM 75,000 from the authorities, which constituted the highest level of compensation payable for such a claim.

43. Thannhauser made post-war restitution and compensation claims for his payments of the *Reichfluchtsteuer*, *Judenvermögensabgabe*, and the costs of immigration in 1937, as well as the loss of considerable art, furniture, rare books, and gallery archives due to Nazi-looting of his Parisian home during the German occupation of France.

44. Thannhauser's business records also show that after the war, he vigorously contacted owners of works that he had kept on consignment outside of Germany during the Nazi regime, and either returned the works or sold them on behalf of the owners or their heirs.

45. Neither Elsa, who resided in Switzerland for more than 50 years after the Paintings were sold to Thannhauser, nor any of the von Mendelssohn-Bartholdy family members ever made any claim for restitution or compensation alleging the loss or forced sale of the Paintings.

SCHOEPS' CLAIMS

46. On March 28, 2007, defendant's counsel wrote separately to each Museum, stating that he was investigating the alleged duress sale by von Mendelssohn-Bartholdy of the Paintings, and asking for access to the Museums' provenance information for each of the Paintings.

47. Pursuant to the Museums' general practices, they each agreed to provide Schoeps' counsel with the same access to the Museums' provenance files and archives that they generally provide to bona fide researchers.

48. The Museums invited Schoeps' counsel to provide them with any and all information he had relating to the Paintings' provenance to allow the Museums to take that information into consideration when evaluating Schoeps' claims.

49. Schoeps' counsel reviewed the provenance files at each Museum, and then requested and the Museums granted, an extension from August 14, 2007, until November 1, 2007, to make his written presentation to the Museums.

50. In two letters to the Museums, each dated November 1, 2007 (the "November letters"), Schoeps' counsel set forth his client's claims of title to the Paintings, and demanded that the Museums return, or agree to return, the Paintings to his client within 11 days of the date of the letters.

51. According to the November letters, Schoeps' claims to the Paintings are based on the allegation that defendant is entitled to recovery of the Paintings under the New York law of conversion, replevin, restitution and constructive trust, because von Mendelssohn-Bartholdy allegedly sold the Paintings in Germany under duress from Nazi persecution. He argues that a presumption of duress applies to the facts and circumstances presented here.

52. After careful consideration and based on recent independent research into the provenance of each Painting, the Museums decided to reject Schoeps' demand. In light of Schoeps' counsel's claim in the November letters that he would take whatever action necessary to preserve his clients' rights, and in light of the Museums' obligation to protect assets held on behalf and for the benefit of the public, the Museums commence this action.

REASONS SCHOEPS' CLAIMS LACK MERIT

There Is No Presumption Of Duress Or Confiscation

53. Defendant contends that, on the facts and circumstances of this case, there is a presumption of duress such that he need not prove duress or a "forced" sale but rather the Museums must prove the absence of duress and a voluntary sale.

54. Schoeps' contention is without merit. Under the laws of New York, Germany, and Switzerland, there is no presumption of duress applicable here. To void a sale or a transfer of title, a claimant must establish actual duress, through physical or mental coercion, sufficient to overcome voluntary choice. Schoeps relies on a presumption established by Military Government Law No. 59 § 375(b), a federal law enacted in 1947, that any transfer or relinquishment of property by a persecuted person in Germany within the period January 30, 1933 to May 8, 1945 was an act of confiscation. That presumption does not apply here, because that Military Law is no longer in effect and because claims under the Military Law could only be made against the state, and not, as Schoeps is attempting to assert here, against private individuals. The German Federal Restitution Act, which provided for a presumption in certain circumstances not applicable here, is not available for claims brought after April 1, 1959. In addition, under that Act there is no presumption of duress because the sale of the Paintings was made to Thannhauser, a private person, with no state or Nazi party involvement in the sale.

Swiss law provides for no presumption of duress. The facts and circumstances here do not justify any presumption of duress.

Even If There Were A Presumption Of Duress, It Is Rebutted By The Evidence

55. Even if there were such a presumption of duress, that presumption is rebutted by the evidence. The facts and circumstances establish that both von Mendelssohn-Bartholdy and his wife were free to decide whether or not to sell their artwork, were free to move artwork in and out of Germany without discrimination, were not under financial pressure to sell as the Paintings represented a negligible percentage of their net worth, and neither the German State nor the Nazi party played any role in directing, urging or otherwise threatening any adverse consequences if the Paintings were not sold to Thannhauser. Nor did the German state or the Nazi party receive any of the proceeds of the sale, either directly or indirectly. The allegation that the Nazi government would force von Mendelssohn-Bartholdy and his wife to sell the Paintings to the Jewish art dealer Thannhauser, whom they knew and with whom they had done business for years, is completely implausible, as is the claim that they had to sell the Paintings because Nazi persecution had left them impoverished.

The Equitable Doctrine Of Laches Bars Schoeps' Claims To The Paintings

56. Defendant Schoeps' claims of title to the Paintings are barred under New York law by the equitable doctrine of laches. Under this doctrine unreasonable delay in asserting a claim will bar that claim if the party in possession is prejudiced in proving its title by reason of that delay. The purpose of the rule is to address the unfairness of allowing a claim to proceed in these circumstances.

57. The Paintings were sold to Thannhauser more than 70 years ago.

58. Defendant Schoeps and his predecessors in interest unreasonably delayed in asserting claims of title to the Paintings. Schoeps provides no indication that any member of the von Mendelssohn-Bartholdy family reported the loss of the Paintings or filed a claim with any of the governmental or non-governmental entities overseeing the restitution of art stolen by the Nazis during the Nazi regime.

59. By contrast, members of the von Mendelssohn-Bartholdy family did actively pursue restitution claims in the post-war period for parcels of land and losses suffered by the family bank.

60. As Schoeps himself recognizes, there is no evidence of any steps taken by him or any members of his family to recover the Paintings until 2005, when Schoeps allegedly discovered information on the Nazi-Era Provenance Internet Portal and on MoMA's website that Schoeps claims suggests the Paintings were sold to Thannhauser in Germany in 1935. Whether or not this is true, and as noted above it is entirely possible that the Paintings were not in Germany at the time of sale and were sold in 1934, the discovery of the alleged location and date of the sale has no bearing on defendant's obligation of reasonable diligence.

61. The Paintings have frequently been exhibited since they were sold in the 1930s. In addition, the Paintings have been publicly displayed in two of the most prominent museums in New York City for decades. *Boy Leading a Horse* has been displayed at MoMA for nearly 70 years, and has been included in the catalogue of MoMA's permanent collection for more than 20 years. In 1992, it appeared on the cover of the catalogue for the Paley Collection exhibition, which toured New York and 15 other cities around the world. *Le Moulin de la Galette* has been on frequent public display at the Guggenheim since 1965, and has been listed in its Thannhauser Collection catalogue for 42 years. The fact that *Le Moulin de la Galette* was

previously owned by von Mendelssohn-Bartholdy is acknowledged in Guggenheim publications as early as 1978.

62. Plaintiffs' ability to defend against Schoeps' threatened claims by proving that the sales were not made under duress or by establishing the exact circumstances of the sales of the Paintings to Thannhauser has been impaired by the passage of time in which Schoeps failed to pursue his claims. For example, despite extensive research, the Museums are unable to determine precisely when Thannhauser purchased the Paintings, whether the sales took place before or after von Mendelssohn-Bartholdy's death, where the Paintings were located at the time of the sale, or how much Thannhauser paid for them. It is also unknown how much Paley paid for *Boy Leading a Horse* the following year.

The Sales To Thannhauser And Paley Are Governed By Swiss Or German Law And Schoeps' Claims Are Barred Under Those Laws

63. New York choice of law rules dictate that questions relating to the validity of a transfer of personal property are governed by the law of the state where the property is located at the time of the alleged transfer. Here, the available facts show a strong probability that the Paintings were in Switzerland when they were sold to Thannhauser. The subsequent sale of *Boy Leading a Horse* to Paley in 1936 definitely occurred in Switzerland. Even if, as Schoeps claims, the Paintings were sold when they were located in Germany, then under New York choice of law rules, the governing law would be the law of Germany.

64. Both German and Swiss laws permit good faith purchasers to acquire valid title to art even if the seller did not have proper title. Indeed, both German and Swiss laws presume that a purchaser acted in good faith, and a plaintiff seeking to reclaim such property has the burden of rebutting that presumption or of showing that the true owner lost the property.

65. Under the German doctrine of *Ersitzung*, title may be obtained by good faith acquisition of property plus possession in good faith, and without notice of defect in title, for the statutory period of ten years from the time the rightful owner loses possession. Under Swiss law, title passes within one year of the date that the location of the allegedly stolen or lost painting was discovered, or thirty years after the loss or theft of the painting.

66. Here, the sale of the Paintings to Thannhauser occurred by August 31, 1935.

67. Thannhauser acted in good faith in purchasing the Paintings. He had a long-standing relationship with von Mendelssohn-Bartholdy whose personal wealth was significant at that time. There is no dispute that von Mendelssohn-Bartholdy and his wife had good title to the Paintings. The available facts give no reason to believe that Thannhauser exerted any duress on them or that Thannhauser could reasonably have believed that the German government was forcing them to sell the Paintings to him, or that von Mendelssohn-Bartholdy and his wife were selling them because they were impoverished due to Nazi persecution.

68. Thannhauser's ownership of *Le Moulin de la Galette* was continuous for over 50 years until his death in 1976.

69. Thus, under German law, if Thannhauser did not immediately acquire good title to *Le Moulin de la Galette* when it was sold to him in 1934 or 1935, then he would have acquired good title ten years after the sale. Under Swiss law, if he did not immediately acquire good title in 1934 or 1935, then he would have acquired good title thirty years after the sale, provided the location of the painting had not been "discovered" before that point, in which case he would have acquired good title a year after such a discovery. In fact, the Guggenheim

began exhibiting *Le Moulin de la Galette* in 1965, and its location has been a matter of public knowledge ever since.

70. Thannhauser's sale to Paley in 1936 of *Boy Leading a Horse* occurred in Switzerland. Paley acquired the Painting in good faith because there existed no facts that he could or should have known that would call into question Thannhauser's title to the Painting. Thannhauser subsequently told Paley that he was the owner of the Painting at the time Paley purchased it.

71. Paley's ownership of the Painting was continuous for almost three decades, and was interrupted only when he gifted the Painting to the MoMA in 1964, retaining a life interest until his death in 1990.

72. Because the Paintings were transferred to the Museums in New York, New York law determines the validity of those transfers. Under New York law, purchasers of goods acquire all title which the transferors had or had the power to transfer. Here, Thannhauser obtained good title to *Le Moulin de la Galette* from Elsa or von Mendelssohn-Bartholdy, or acquired good title through his good faith at the time of the purchase and his continued ownership of the Painting for either ten years under German law or thirty years under Swiss law, and therefore conveyed good title to the Guggenheim. Here, also, Elsa or von Mendelssohn-Bartholdy conveyed good title to *Boy Leading a Horse* to Thannhauser. Paley obtained good title from Thannhauser or acquired good title through his good faith at the time of purchase and his continued ownership of the Painting for thirty years. Paley then conveyed good title to MoMA. Therefore, the transfers to MoMA and the Guggenheim were valid, and the Museums have good title to the Paintings.

In Any Event, Schoeps Is Not The Rightful Claimant To The Paintings

73. In any event, even were the sale of the Paintings to Thannhauser invalid, Schoeps is not the rightful claimant to the Paintings, because they had been gifted to Elsa in 1927, before they were sold to Thannhauser, which gift was confirmed in 1935 by the beneficiaries of von Mendelssohn-Bartholdy's will, including Schoeps' grandparents.

74. Schoeps claims to be an heir of von Mendelssohn-Bartholdy. He does not claim to represent Elsa's estate or her heirs.

CLAIM FOR RELIEF

(Declaratory Judgment)

75. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1 through 74 as if fully set forth herein.

76. Plaintiffs are entitled to a declaratory judgment that no presumption of duress applies to the sale of the Paintings to Thannhauser.

77. Plaintiffs are entitled to a declaratory judgment that the available facts establish the sale was not made under duress, whether such a presumption exists or not.

78. Plaintiffs are entitled to a declaratory judgment that defendant's claims are barred by the equitable doctrine of laches because defendant unreasonably delayed in bringing his claims and plaintiffs were prejudiced by that delay.

79. Plaintiffs are entitled to a declaratory judgment that defendant's claims of ownership of the Paintings are barred by the applicable laws of Switzerland or Germany.

80. Plaintiffs are entitled to a declaratory judgment that defendant's claims are invalid because he is not the proper claimant to the Paintings.

81. Plaintiffs are entitled to a declaratory judgment that the defendant has no valid claims to the Paintings.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request that the Court:

1. Grant plaintiffs the declaratory judgment to which they are entitled as alleged herein; and
2. Grant such other and further relief as the Court deems just and proper.

Dated: New York, New York
December 6, 2007

Respectfully submitted,

CLEARY GOTTlieb STEEN & HAMILTON LLP

By: 

Evan A. Davis
Member of the Firm

One Liberty Plaza
New York, New York 10006
Tel: (212) 225-2000

Attorneys for The Museum of Modern Art
and The Solomon R. Guggenheim Foundation

EXHIBIT A

MoMA The Museum of Modern Art

Pablo Picasso, Spanish, 1881-1973

Boy Leading a Horse

Paris, 1905-06

Oil on canvas

7' 2 7/8" x 51 5/8" (220.6 x 131.2 cm)

The William S. Paley Collection

575.1964



Catalogue Raisonnés:

Zervos (1932), vol.1, no. 264, plate (Black and white) p. 118

Daix and Boudaille (1967), p. 286, catalogue number XIV

Illustrations in select MoMA publications:

1939

Art in Our Time Color Portfolio I, no. 156 (color)

Not illustrated in the actual exhibition catalogue but in the accompanying "Color Portfolio I" (color)

Picasso: Forty Years of His Art. Alfred H. Barr, ed. First edition, p. 49, no. 54

1940

Picasso: Forty Years of His Art. Alfred H. Barr, ed. Third revised edition, p. 49, no. 54

1946

Picasso: Fifty Years of His Art. Alfred H. Barr. P. 43 (color)

1955

The Museum of Modern Art Bulletin, vol. 22, no. 4 (summer 1955). Installation shot from *Paintings from Private Collections: A 25th Anniversary Exhibition*. Its exhibition catalogue has no illustrations

1957

Picasso: 75th Anniversary Exhibition. Alfred H. Barr, ed., p. 27

1958

Works of Art: Given or Promised, p. 35

1966

Picasso: Fifty Years of his Art. Alfred H. Barr. Reprint edition, p. 43

1970

Four Americans in Paris: The Collection of Gertrude Stein and Her Family. No. 36

1972

Picasso in the Collection of The Museum of Modern Art. William Rubin, p. 34 (color)

1977

Cézanne: The Late Work. Essays by Theodore Reff, Lawrence Gowing, Liliane Brion-Guerry et. al., p. 181 (black and white)

1980

Pablo Picasso: A Retrospective. William Rubin, p. 68 (color)

1984

The Museum of Modern Art, New York: The History and the Collection. Introduction by Sam Hunter, p. 91, no. 84 (color)

1992

The William S. Paley Collection. William Rubin and Matthew Armstrong. Cover ill. in color, p. 99 (color), p. 100 (detail in color), p. 166 (black and white)

An Invitation to See. Helen M. Franc, p. 31 (color)

Not included in the 1973, 1983, and 1985 editions

1997

Picasso: Masterworks from The Museum of Modern Art. Kirk Varnedoe and Pepe Karmel, p.43 (color)

Picasso: Chefs-d'oeuvre du Musée d'art moderne de New York. Kirk Varnedoe and Pepe Karmel, p. 42 color

Exhibition organized by MoMA in collaboration with the Musée des Beaux-Arts du Canada, Ottawa.

1999

Modern Starts: People, Places, Things. John Elderfield and Peter Reed, eds. P. 134 (color)

2002

Matisse Picasso. Elizabeth Cowling, John Golding, anne Baldessari, isabelle Monod-Fontaine, John Elderfield, Kirk Varnedoe, p. 38 (color)

2003

Visions of Modern Art: Painting and Sculpture from The Museum of Modern Art. John Elderfield, ed., p. 80 (color)

2004

Art in Our Time: A Chronicle of The Museum of Modern Art. Harriet S. Bee and Michelle Elligott, eds., p. 112

Das MoMA in Berlin: Erinnerungen. Katharina von Chlebowsky and André Odier, p. 116 (color)

Modern Painting and Sculpture. John Elderfield, ed., p. 148 (color)

EXHIBIT B

MoMA The Museum of Modern Art

Pablo Picasso, Spanish, 1881-1973

Boy Leading a Horse

Paris, 1905-06

Oil on canvas

7' 2 7/8" x 51 5/8" (220.6 x 131.2 cm)

The William S. Paley Collection

575.1964



Exhibition History:

- Buenos-Aires, Galeria Müller, 1934
- New York, Marie Harriman Gallery, "French Painting", 1937
- New York, Jacques Seligmann & Co., "Twenty Years in the Evolution of Picasso, 1903-23", 1937
- Boston, Institute of Modern Art, "Picasso, Henri Matisse", 1938
- MoMA Exh. #85: "Art in Our Time: 10th Anniversary Exhibition, Painting, Sculpture, Prints", May 10 - September 30, 1939
- MoMA Exh. #91: "Picasso: Forty Years of His Art", November 15, 1939 - January 7, 1940 and tour:
 - Chicago, The Art Institute of Chicago, February 1 - March 3, 1940
 - St. Louis, City Art Museum of St. Louis, March 16 - April 14, 1940
 - Boston, Museum of Fine Arts, April 26 - May 25, 1940
 - San Francisco, San Francisco Museum of Art, June 25 - July 22, 1940
 - Cincinnati, Cincinnati Museum of Art, September 28 - October 27, 1940
 - Cleveland, Cleveland Museum of Art, November 7 - December 8, 1940
 - New Orleans, Isaac Delgado Museum, December 20, 1940 - January 17, 1941
 - Minneapolis, Minneapolis Institute of Arts, February 1 - March 2, 1941
 - Pittsburgh, Carnegie Institute, March 15 - April 13, 1941
- MoMA Exh. #138: "Masterpieces of Picasso", July 16 - September 7, 1941
- MoMA, 2nd floor landing, September 7 - November 18, 1941
- MoMA, 1st floor entrance, January 16 - 20, 1942

- MoMA, 1st floor, February 3 - April 5, 1942
- MoMA, 3rd floor, August 9, 1943 - January 15, 1944
- Toronto, The Art Gallery of Toronto, "Loan Exhibition of Great Paintings in Aid of Merchant Seamen", February 4 - March 12, 1944
- Mexico City, Sociedad de Arte Moderno, "Picasso Exhibition", June 26 - September 10, 1944
- MoMA, 3rd floor hall, November 22, 1944 - March 26, 1945
- Denver, Denver Art Museum, "Picasso", April 13 - May 13, 1945
- MoMA, 1st floor entrance, August 13 - September 14, 1945
- MoMA Exh. #324: "Painting, Sculpture, and Graphic Art from the Museum Collection", July 2, 1946 - November 8, 1946
- MoMA, 1st floor entrance, March 24 - June 2, 1947; 1st floor, June 2 - 24, 1947
 - New York, M. Knoedler & Co., "Early Picasso", October 13 - November 8, 1947
- MoMA Exh. #580: "Paintings from Private Collections", May 31 - September 7, 1955
- MoMA Exh. #619: "Picasso 75th Anniversary", May 4 - August 25, 1957 and tour:
 - Chicago, Art Institute of Chicago, October 29 - December 8, 1957
 - Philadelphia, Philadelphia Museum of Art, January 8 - February 22, 1958
- MoMA Exh. #633: "Works of Art: Given or Promised", October 8 - November 9, 1958
- MoMA Exh. #705: "80th Birthday Exhibition - Picasso: The Museum Collection, Present and Future", May 14 - September 18, 1962
- MoMA Exh. #950: "Four Americans in Paris: The Collections of Gertrude Stein and Her Family", December 19, 1970 - March 1, 1971 and tour:
 - Baltimore, Baltimore Museum of Art, April 4 - June 15, 1971
 - San Francisco, San Francisco Museum of Art, early September - October 31, 1971
- MoMA Exh. #993: "Picasso in the Collection of The Museum of Modern Art", February 3 - April 2, 1972
- MoMA Exh. #1290: "Pablo Picasso: A Retrospective", May 16 - September 30, 1980
- MoMA Exh. #1372: "Selections from the Permanent Collection: Painting and Sculpture", II-6, May 17 - September 26, 1984; I-Garden Hall, November 12, 1990 - January 2, 1991; II-6, April 22 - August 4, 1992
- MoMA Exh. #1614: "The William S. Paley Collection", International Council Galleries, January 30 - April 7, 1992

- Indianapolis, Indianapolis Museum of Art, September 10 - November 15, 1992
- Seattle, Seattle Art Museum, December 17, 1992 - February 7, 1993
- Los Angeles, Los Angeles County Museum of Art, February 28 - May 16, 1993
- San Diego, San Diego Museum of Art, June 12 - October 3, 1993
- Baltimore, Baltimore Museum of Art, October 31, 1993 - January 9, 1994
- New Orleans, New Orleans Museum of Art, February 6 - April 17, 1994
- The Phillips Collection, Washington, D.C., January 21, 1995 - March 26, 1995
- Memphis Brooks Museum of Art, April 23, 1995 - June 25, 1995
- Albright-Knox Art Gallery, July 22, 1995 - October 1, 1995
- The Montreal Museum of Fine Arts, October 26, 1995 - January 7, 1996
- Ueno Royal Museum, Tokyo, March 19, 1996 - June 9, 1996
- Art Gallery of South Australia, Adelaide, July 5, 1996 - August 18, 1996
- Art Gallery of New South Wales, Sydney, September 3, 1996 - October 13, 1996
- National Gallery of Victoria, Melbourne, October 26, 1996 - December 1, 1996
- Art Gallery of Western Australia, December 18, 1996 - March 9, 1997
- MoMA Exh. #1656: "Selections from the Permanent Collection of Painting and Sculpture", II-3, May 19, 1994 - January 3, 1995; II-4, January 19, 1996 - February, 1997; September 17, 1997 - ?
- MoMA Exh. #1836C: "MoMA2000, ModernStarts, People: Composing the Figure", October 7, 1999 - February 1, 2000
- MoMA Exh. #1867A: "Collection Highlights", May 25, 2000 - January 28, 2001
- MoMA Exh. #1881A: "Collection Highlights", February 1, 2001 - February 19, 2002
 - London, Tate Modern, "Matisse Picasso", May 6 - August 18, 2002 and tour:
 - Paris, Galeries Nationales du Grand Palais, September 24, 2002 - January 6, 2003
 - MoMA Exh. #1906: "Matisse Picasso", MoMAQNS-Temporary Exhibition Space B, February 13 - May 19, 2003
 - Houston, The Museum of Fine Arts, "The Heroic Century: The Museum of Modern Art's Masterpieces, 200 Paintings and Sculptures", September 21, 2003 - January 4, 2004

- Berlin, Neue Nationalgalerie, "MoMA in Berlin: Masterworks from The Museum of Modern Art", February 18 - September 19, 2004
- MoMA Exh. #1931: "Painting and Sculpture: Inaugural Installation", 5th Floor, gallery 2, November 20, 2004 - May 1, 2006
- Madrid, Museo Nacional del Prado, "Picasso. Tradition and Avant-Garde", June 5 - September 3, 2006 (extended through September 10, 2006)
- MoMA Exh. #1960a: "Painting and Sculpture Changes 2006", 5th Floor, gallery 2, October 25, 2006 – present

EXHIBIT C

GuggenheimMUSEUM

Pablo Picasso, Spanish, 1881-1973

Le Moulin de la Galette, Autumn 1900

Oil on canvas

34 $\frac{3}{4}$ x 45 $\frac{1}{2}$ inches (88.2 x 115.5 cm)

Solomon R. Guggenheim Museum, New York,

Thannhauser Collection, Gift, Justin K. Thannhauser, 1978

78.2514.34



Exhibition History:

- Buenos Aires, Galeria Müller, organized by Justin K. Thannhauser, *Picasso*, October 1934, cat. no. 1 (not reproduced).
- New York, The Museum of Modern Art, *Picasso: Forty Years of His Art*, 15 November 1939 – 7 January 1940, p. 24, cat. no. 5, b/w repro.; traveled to The Art Institute of Chicago, 1 February – 3 March 1940; Boston, Institute of Modern Art, 27 April – 26 May 1940.
- New York, The Museum of Modern Art, *Masterpieces of Picasso*, 15 July – 7 September 1941, cat. no. 5.
- New York, M. Knoedler & Co., *Picasso Before 1907*, 15 October – 8 November 1947, cat. no. 3 (not reproduced).
- New York, The Museum of Modern Art, *Picasso: 75th Anniversary Exhibition*, 22 May – 8 September 1957, p. 15, repro.; traveled to The Art Institute of Chicago, 29 October – 8 December 1957.
- Philadelphia Museum of Art, *Picasso*, 8 January – 23 February 1958, cat. no. 4, repro.
- London, Tate Gallery (organized by the Arts Council of Great Britain), *Picasso*, 6 July – 18 September 1960, cat. no. 4, pp. 13-14, and pl. 1b.
- New York, Solomon R. Guggenheim Museum, *Masterpieces of Modern Art, by Courtesy of the Thannhauser Foundation*, 30 April – 3 October 1965, cat. no. 30, p. 39, color repro.
- Paris, Grand Palais, *Hommage à Pablo Picasso*, November 1966 – February 1967, cat. no. 3, repro.

- New York, Solomon R. Guggenheim Museum, *The Guggenheim Museum Justin K. Thannhauser Collection*, ongoing installation, opened 14 December 1978, cat. no. 34, color repro. p. 112.¹
- New York, The Museum of Modern Art, *Pablo Picasso: A Retrospective*, 22 May – 16 September 1980, p. 32, b/w repro.
- New York, Solomon R. Guggenheim Museum, *The Expressive Figure from Rousseau to Bacon: European Art in the Guggenheim Museum Collection*, 18 July – 21 September 1986, p. 3, repro., and p. 4.
- New York, Solomon R. Guggenheim Museum, *Fifty Years of Collection: An Anniversary Selection, Painting by Modern Masters*, 13 November 1987 – 13 March 1988, cat. no. 27, color repro.
- New York, Solomon R. Guggenheim Museum, *Selections from the Permanent Collection*, 26 May – 3 September 1989 (no catalogue).
- New York, Solomon R. Guggenheim Museum, *Masterpieces from the Collection*, 21 February – 29 April 1990 (no catalogue).
- Venice, Palazzo Grassi, organized by Solomon R. Guggenheim Museum, *From van Gogh to Picasso, From Kandinsky to Pollock, Masterpieces of Modern Art (Da van Gogh a Picasso, Da Kandinsky a Pollock: Il percorso dell'arte moderna)*, 9 September – 9 December 1990, pp. 98-99, cat. no. A22, color repro.
- Montreal, The Montreal Museum of Fine Arts, organized by the Solomon R. Guggenheim Museum, *Masterpieces from the Guggenheim (Chefs-d'oeuvre du Musée Guggenheim)*, 3 February – 26 April 1992, pp. 70-71, cat. no. 8, color repro.
- New York, Solomon R. Guggenheim Museum, *The Guggenheim Museum and the Art of This Century*, 28 June – 7 September 1992, plate no. 19, p. 98.
- Washington, D.C. National Gallery of Art, *Picasso: The Early Years, 1892-1906*, 30 March – 27 July 1997, p. 16, repro, (detail), and p. 123, cat. no. 40; traveled to Boston, Museum of Fine Arts, 10 September 1997 – 4 January 1998.
- London, Royal Academy of Arts, *1900: Art at the Crossroads*, 16 January – 3 April 2000, p. 210, cat. no. 141, color repro., and p. 438; traveled to New York, Solomon R. Guggenheim Museum, 18 May - 13 September 2000.

¹ *Le Moulin de la Galette* is frequently on view in the Thannhauser Galleries at the Guggenheim when not approved for an outgoing loan or special exhibition.

- St. Petersburg, State Hermitage Museum, *Le Moulin de la Galette*, 15 July – 21 September 2001, color repro. p. 2 (one-picture exhibition with brochure).
- Paris, Galeries nationales du Grand Palais, *Paris-Barcelone*, 9 November 2001 – 15 January 2002; traveled to Barcelona, Museu Picasso, 28 February – 26 May 2002, color repro. pp. 228-229.
- Bilbao, Guggenheim Museum Bilbao, *A Hidden Picasso*, 13 September 2004 – 16 January 2005 (no catalogue).
- Washington, D.C., National Gallery of Art, *Toulouse Lautrec and Montmartre*, 20 March – 12 June 2005, cat. no. 151, p. 133, color repro.; traveled to Chicago, The Art Institute of Chicago, 16 July – 10 October 2005.
- Cleveland, The Cleveland Museum of Art, *Barcelona & Modernity: Gaudí to Dalí*, 15 October 2006 – 7 January 2007, cat. no. 29, p. 59, color repro.; traveled to New York, The Metropolitan Museum of Art, 7 March 2007 – 3 June 2007.

EXHIBIT D

GuggenheimMUSEUM

Pablo Picasso, Spanish, 1881-1973

Le Moulin de la Galette, Autumn 1900

Oil on canvas

34 $\frac{3}{4}$ x 45 $\frac{1}{2}$ inches (88.2 x 115.5 cm)

Solomon R. Guggenheim Museum, New York,

Thannhauser Collection, Gift, Justin K. Thannhauser, 1978

78.2514.34



Selected Published References:

- Zervos, Christian. *Pablo Picasso*. Paris: Cahiers D'Art, 1932, vol. I, cat. no. 41 and pl. 20.
- Weill, Berthe. *Pan! dans l'Oeill*. Paris: Librairie Lipschutz, 1933, p. 67.
- Frankfurter, A. M. "Picasso in Retrospect: 1939-1900. The Comprehensive Exhibition in New York and Chicago." *Art News*, vol. 38, cat. no. 7, Nov. 18, 1939, p. 11, repro.
- Cassou, Jean. *Picasso*. New York: Hyperion Press, 1940, p. 36, repro., and p. 165.
- Mackenzie, Helen F. *Understanding Picasso*. Chicago: The University of Chicago Press, 1940, pl. 1.
- Barr, Alfred H. Jr. *Picasso: Fifty Years of His Art*. New York: Museum of Modern Art, 1946, p. 18, repro., and pp. 19 and 253.
- Cirici Pellicer, Alexandre. *Picasso antes de Picasso*. Barcelona: Iberia, 1946, p. 64 and cat. no. 20, repro.
- Merli, Juan. *Picasso, el artista y la obra de nuestro tiempo*. Rev. Ed. Buenos Aires: Editorial Poseidón, 1948, pl. 24.
- Cirici Pellicer, Alexandre. *Picasso avant Picasso*. Trans. M. de Floris and V. Gasol. Geneva: P. Cailler, 1950, cat. no. 18, repro.
- Lieberman, William Slattery. *Pablo Picasso: Blue and Rose Periods*. New York: H. N. Abrams in association with Pocket Books, 1954, pl. 12.
- Boeck, Wilhelm, and Jaime Sabartés. *Picasso*. New York: Harry N. Abrams, 1955, p. 117.
- *Picasso*. Definitive ed. Paris: Musée des Arts Décoratifs (exhibition catalogue), 1955, p. 20.

- Aznar, José Camon, *Picasso y el Cubismo*. Madrid: Espasa-Calpe, 1956, repro. pl. 214.
- Vallentin, Antonina. *Pablo Picasso*. Paris: A. Michel, 1957, p. 48.
- Penrose, Roland, Sir. *Picasso: His Life and Work*. London : Gollancz, 1958, cat. no. 8, pl. I.
- de Champris, Pierre. *Picasso: ombre et soleil*. Paris : Gallimard, 1960, pl. 3.
- Jaffé, Hans Ludwig C. *Picasso*. New York: Harry N. Abrams, 1964, p. 15.
- Daix, Pierre and Georges Boudaille. *Picasso: The Blue and Rose Periods. A Catalogue Raisonné of the Paintings, 1900-1906*. Greenwich: New York Graphic Society, 1966, cat. no. II. 10, pp. 28, 29, color repro., pp. 30, 33, 34, and 122, repro.
- Daulte, F. "Une Donation sans precedent: la collection Thannhauser." *Connaissance des Arts*, cat. no. 171, May 1966, p. 68, color repro.
- Reff, Theodore. Review of A. Blunt and P. Pool, "Picasso: The Formative Years". *The Art Bulletin*, vol. XLVIII, June 1966, p. 267.
- Fermigier, A.ndré (ed.). *Picasso*. Paris: Hachette, 1967, p. 41, repro.
- Wertenbaker, Lael. *The World of Picasso*. New York: Time-Life Books, 1967, p. 21, repro., and p. 31.
- Arnason, H. Harvard. *History of Modern Art*. New York: Harry N. Abrams, 1968, pp. 117-118, repro.
- Cooper, Douglas. *Picasso Theatre*. New York: Harry N. Abrams, 1968, p. 341 and pl. 25.
- Finkelstein, Sidney. *Der junge Picasso*. Dresden: VEB Verlag der Kunst, 1970, pp. 44-45, 162, and pl. 54.
- Broude, N. F. "Picasso's Drawing, *Woman with a Fan*: The Role of Degas in Picasso's Transition to his 'First Classic Period.'" *Oberlin College Bulletin*, vol. 29, winter 1972, p. 87, fn. 9.
- Daval, J.-L. "Guidelines." In Jean Leymarie, *Picasso: The Artist of the Century*. London: Macmillan, 1972, p. 203, repro., and p. 291. Originally published as *Picasso, metamorphoses et unité* (Geneva: Skira, 1971), translated from the French by James Emmons.
- Elgar, Frank, and Robert Maillard. *Picasso*. Rev. ed. New York: Praeger, 1972, p. 182.

- *Masterpieces of Modern Art: A Picture Book of Nineteenth and Twentieth Century Masterpieces from the Thannhauser Foundation*. New York: Solomon R. Guggenheim Foundation, 1972, p. 45, color repro.
- Warnod, Jeanine. *Washboat Days*. Trans. C. Green. New York: Grossman, 1972, pp. 61 and 65.
- Toyama, Kazuyuki, Kimio Nakayama, and Shuji Takashina. *Picasso*. Tokyo: Chuo Koronsha, Showa 48, 1973, p. 114, fig. 17, and pl. 17.
- Kramer, H. "Picasso's Very First Painting in Paris." *The New York Times*, July 28, 1974, Section D, p. 17, repro.
- *Impressionism*. New York: The Metropolitan Museum of Art (exhibition catalogue), 1974, p. 186.
- Porzio, Domenico, and Marco Valsecchi. *Understanding Picasso*. New York: Newsweek Books, 1974, c1973, pl. 2, pp. 34, 57.
- Quinn, E., and Pierre Descargues. *Picasso*. Paris: Felicie, 1974, p. 206, repro.
- Thomas, Denis. *Picasso and His Art*. New York: Galahad Books, 1975, p. 16.
- Baumann, Felix Andreas. *Pablo Picasso: Leben und Werk*. Stuttgart: Hatje, 1976, pp. 12-13, fig. 12, and p. 204, cat. no. 12.
- Barnett, Vivian Endicott. *The Guggenheim Museum Justin K. Thannhauser Collection*. New York: Guggenheim Museum Publications, 1978, cat. no. 34, color repro. p. 112.
- Stuckey, C. *Toulouse-Lautrec: Paintings*. Chicago: The Art Institute of Chicago (exhibition catalogue), 1979, p. 147, fig. 8.
- Barnett, Vivian Endicott. *Handbook: The Guggenheim Museum Collections (1900-1980)*. New York: Guggenheim Museum Publications, 1980, pp. 52-53, cat. no. 14, repro.
- *Picasso: 1881-1973: Exposició Antològica*. Madrid: Museo Español de Arte Contemporáneo, Madrid, and Barcelona: Museu Picasso (exhibition catalogue), 1981, p. 16, repro.
- Palau i Fabre, Josep. *Picasso: The Early Years, 1881-1907*, trans. K. Lyons. New York: Rizzoli, 1981. Originally published as *Picasso Vivent 1881-1907. Infantesa i primera joventut d'un demiürg* (Barcelona: Edicions Polígrafa, 1980), pp. 208-209, cat. no. 509, color repro., and p. 531.
- *Der Junge Picasso: Frühwerk und blaue Periode*. Zurich: Kunstmuseum Bern (exhibition catalogue), 1984, p. 55, fig. a, repro., and p. 174.

- *Picasso/Miró/Dalí: Evocations d'Espagne*. Charleroi, Belgium : Palais des Beaux-Arts (exhibition catalogue), 1985, p. 20.
- Glimcher, A., and M. Glimcher (eds). *Je Suis le Cahier: The Sketchbooks of Picasso*. Boston and New York: Pace Gallery (exhibition catalogue), 1986, p. 308.
- *Pablo Picasso: The Artist Before Nature*. Auckland: Auckland City Art Gallery (exhibition catalogue), 1989, p. 40.
- Boone, Danièle. *Picasso*. Trans. J. Greaves. New York: Studio Editions, 1989, p. 10. French ed.: Paris, 1989.
- *Picasso in Italia*. Milan: Galleria d'Arte Moderna e Contemporanea Palazzo Forti, Verona (exhibition catalogue), 1990, p. 200.
- Richardson, John, with Marilyn McCully. *A Life of Picasso: Volume I: 1881-1906*. New York: Random House, 1991, p. 166, repro., pp. 167-168, 182, and 195.
- *Guggenheim Museum: A to Z*. New York: Guggenheim Museum Publications, 1992, pp. 206-207, color repro.
- *Art of This Century: The Guggenheim Museum and Its Collection*. New York: Guggenheim Museum Publications, 1993, pp. 98-99, color repro. pl. 19.
- Setford, D. F. *Pablo Picasso: A Vision*. West Palm Beach, Fla.: Norton Gallery of Art (exhibition catalogue), 1994, p. 12, fig. 2.
- Drutt, Matthew (ed.). *The Thannhauser Collection of the Guggenheim Museum*. New York: Guggenheim Museum Publications, 2001, cat. no. 25, pp. 283-284, color repro. p. 147.
- Nancy Spector (ed.). *Guggenheim Museum Collection: A to Z*. New York: Guggenheim Museum Publications, 2001/2002, second edition, color repro. p. 265.
- Berggruen, Olivier, and Max Hollein (eds.). *Picasso und das Theater (Picasso and the Theater)*. Ostfildern: HatjeCantz / Schirn Kunsthalle, Frankfurt (exhibition catalogue), 2006, color repro. p. 251.